*cost of providing the service. The FCC has determined that it is therefore appropriate to address the issue of access charge reform in a separate proposed rulemaking proceeding, along with a proposed rulemaking that addresses universal service reform. The Georgia Public Service Commission recently agreed that it is premature to address the issue of exchange access charge reform in the context of an AT&T arbitration proceeding.*

**ANALYSIS AND FINDINGS:**

BellSouth is correct in its assertion that this issue is beyond the scope of arbitration in the instant proceeding (See discussion at Issue 3, supra, on the allowable scope of arbitration.) Furthermore, the FCC has initiated a comprehensive rulemaking proceeding relative to universal service and access charges (CC Docket 96-45), recently issuing its First Report and Order regarding its findings. This Commission is itself has a pending proceeding (Docket U-20883(A)), awaiting a definitive ruling from the FCC in its proceeding so that a comprehensive analysis of access charges and universal service funding in Louisiana may be conducted. While this issue certainly warrants analysis, the present arbitration is simply an inappropriate procedural forum for its resolution.

ISSUE 29: **Collect, Third-party, IntraLATA, and Information Service Provider Calls**

**AT&T's Position:** *The parties have resolved this issue with regard to information service provider calls. However, the issue as it applies to collect, third party, and intraLATA calls remains in dispute. The Commission should require BellSouth to use the Centralized Message Distribution System ("CMDS") process for billing of intraLATA collect, third party, and calling card calls. Under this process, all such calls are billed at the originating service provider's rates. The telecommunications industry currently uses the CMDS process to determine the applicable rates and appropriate compensation for collect, third party, and calling card interLATA calls. CMDS has*

*eliminated confusion and disputes as to which rates apply and the compensation due each carrier. This process greatly simplifies the billing procedure for interLATA calls. Likewise, application of the CMDS process to intraLATA calls would simplify billing procedures for those calls as well. The FCC Order did not address this issue, but AT&T's position is consistent with the purpose of the Act: using familiar processes will enable new market entrants to compete more quickly.*

**BellSouth's Position:** *The parties have resolved the issue of rating and billing for information service provider calls. The issue that remains to be arbitrated involves AT&T's position on the processing and rating of collect and third-number type calls. AT&T appears to request a uniform regional system for processing of intraLATA collect and third-number calls. Further, it appears to request that BellSouth bill AT&T's rates when an AT&T local customer calls a BellSouth customer collect or requests to change the call to a third-number subscribed to by a BellSouth end user.*

*First, while AT&T's vision of a uniform, regional system for processing these types of calls may indeed simplify matters for AT&T, such a system does not exist today. BellSouth will provide the capabilities AT&T requests on a state-specific level, and has also examined the feasibility of a systems modification that would create national uniformity, if adopted by all system users.*

*Second, BellSouth can only bill its own retail rates for these calls, because it has no access to AT&T's rates. If AT&T wants different rates billed, it could bill those charges itself or contract with BellSouth or another entity to have them billed.*

*BellSouth has no obligations under the Act or otherwise to develop and implement a new system simply to meet AT&T's desire for uniformity.*

**ANALYSIS AND FINDINGS:**

As to collect, third party and intraLATA calls the originating local service providers' rates will apply. BellSouth is to bill its charges to its end users and then bill resold services to AT&T at the appropriate Commission approved discount rate for the purposes of AT&T billing its end users utilizing the resold BellSouth Service.

**ISSUE 30: General Contractual Terms and Conditions**

**AT&T's Position:** *The Commission should require BellSouth to negotiate specific contractual terms (regarding, for example, quality of service standards) with explicit penalties for non-performance that will enable competitors to enter the market. The agreement between AT&T and BellSouth should have terms addressing alternate dispute resolution, liability and indemnity.*

**BellSouth's Position:** *AT&T contends that this Commission should approve the general contractual terms and conditions incorporated in its proposed agreement for matters such as the resolution of disputes, performance requirements and the treatment of confidential information. AT&T readily admits, however, that these matters are not addressed specifically by the Act. Instead, AT&T attempts to base this request, like many others, on nothing more than the general concept of "parity". Nothing in the Act, however, suggests that one party can force upon another contractual terms regarding dispute resolution or confidentiality that would apply to govern an arbitration agreement. Certainly the parties are free to negotiate these items when they attempt to reach an agreement on the basis of the Order that the Commission will enter in this case. It makes no sense, however, to dictate now the terms of, for example, how to resolve disputes over an agreement that will only be negotiated after the Commission enters its Order on the substantive issues in this proceeding. The Commission should simply decline to rule on this request.*

**ANALYSIS AND FINDINGS:**

As was noted in discussion of Issue 3, supra, BellSouth was under an affirmative obligation to negotiate in good faith the particular terms and conditions of agreements to fulfill *only* those duties which were specifically enumerated in §251(b)(1-5) and (c)(2-6) of the Act. This Commission's authority is likewise limited to resolution of issues appearing on that exclusive listing. Even a casual review of the Act will readily disclose that the requested contractual language is not among those issues specifically enumerated for negotiation and arbitration in the Act, and this issue is therefore inappropriate for arbitration Nevertheless, it is prudent for BellSouth and AT&T to have general terms and conditions to their interconnection, and the parties are instructed to include in their interconnection agreement to be filed with this Commission for approval *mutually* agreeable "general terms and conditions" contract language.

**ACCORDINGLY, IT IS HEREBY ORDERED**

All BellSouth Contract Service Agreements which are in place as of the effective date of this Order shall be exempt from mandatory resale However, all CSA's entered into by BellSouth or terminating after the effective date of this Order will be subject to resale, at no discount,

N11/911/E911 services are found not subject to mandatory resale under the Act;

BellSouth shall re-sell Link Up/Lifeline services to AT&T, with the restriction that AT&T shall offer such services only to those subscribers who meet the criteria that BellSouth currently applies to subscribers of these services; AT&T shall discount the Link Up/Lifeline services by at least the same percentage as now provided by BellSouth; and AT&T shall comply with all aspects of any applicable rules, regulations or statutes relative to the providing of Link Up/Lifeline programs;

Short-term promotions, which are those offered for 90 days or less, are not subject to mandatory resale; however, promotions which are offered for a term of more than 90 days must made available for discounted resale, with the express restriction that AT&T shall only offer a promotional rate obtained from BellSouth for resale to customers who would qualify for the promotion if they received it directly from BellSouth.

"Grandfathered Services" (service available only to a limited group of customers that have purchased the service in the past) must be made available for resale to the same limited group of customers that have purchased the service in the past;

To the extent AT&T purchases services for resale it shall be required to do so on an "as-is" basis;

AT&T's request for adoption of Direct Measures of Quality ("DMOQs") is denied as beyond the proper scope of arbitration; however, the service quality standards contained in this Commission General Order or March 15, 1996 are specifically reaffirmed;

AT&T's request for a contractual provision that BellSouth should be responsible for any work errors that result in unbillable or uncollectible AT&T revenues and should compensate AT&T for any losses caused by BellSouth's errors, is dismissed as beyond the scope of arbitration;

BellSouth must provide the electronic interfaces requested by AT&T within 12 months of AT&T's providing specifications for the interfaces it desires to be provided with. All costs prudently incurred by BellSouth in developing these electronic interfaces shall be borne by AT&T. If any future CLEC utilizes the electronic interfaces developed by BellSouth for AT&T, they shall reimburse AT&T for its cost incurred relative to the development of such electronic interfaces on a pro-rata basis determined on actual usage It is specifically noted that even after these interfaces are in place,

AT&T is not entitled to direct access to BellSouth's customer records, pursuant to this Commission's General Order dated March 15, 1996. In the event BellSouth customers request and/or consent to the disclosure, BellSouth shall disclose the customers current services and features to AT&T. Customer consent to such disclosure may be evidenced in a three-way call or other reliable means. Furthermore, BellSouth and AT&T are to develop a methodology for BellSouth to provide customer service records in accordance with §§ 901(L)(1); 1001(D) and (F) and 1101(F), (G) and (H) of the General Order dated March 15, 1996, entitled "Regulations for Competition in the Local Exchange Market;"

AT&T's request for selective routing is denied as being technically unfeasible at present, however, BellSouth is Ordered to show cause within six (6) months of entry of this Order why it should not be ordered to provide selective routing. If AIN selective routing remains technically unfeasible, BellSouth shall bear the burden of so proving, and shall be required to establish for the record that it has taken all reasonable steps to resolve the technological limitations on AIN or other means selective routing,

AT&T's request for "branding" is denied as technically unfeasible at present, but, at such time as selective routing becomes available, BellSouth shall "brand" its services as requested by AT&T;

AT&T's request for placement of its name and logo on directory covers is denied as beyond the proper scope of these proceedings;

BellSouth shall advise AT&T at least 45 days in advance of any changes in the terms and conditions under which it offers Telecommunications Services to subscribers who are non-telecommunications carriers including, but not limited to, the introduction or discontinuance of any feature, function, service or promotion. To the extent that revision occur between the time BellSouth

notifies AT&T of the change, BellSouth shall immediately notify AT&T of such revisions consistent with its internal notification process. BellSouth may not be held responsible for any cost incurred by AT&T as a result of such revisions, unless such costs are incurred as a result of BellSouth's intentional misconduct. AT&T is expressly precluded from utilizing the notice given by BellSouth to market its resold offering of such services in advance of BellSouth;

In circumstances where there is an open connections or terminals in BellSouth's NID, AT&T shall be allowed to connect its loops to such open connections or terminals. However, in circumstances where there are no open connections or terminals, AT&T may effect a NID-to-NID connection as described in the FCC Order, at ¶¶392 - 394.

BellSouth shall provide AT&T with access to its AIN facilities, but only subject to mediation;

AT&T shall be allowed to combine unbundled network elements in any manner they choose; however, when AT&T recombines unbundled elements to create services identical to BellSouth's retail offerings, the prices charged to AT&T for the rebundled services shall be computed at BellSouth's retail price less the wholesale discount established in Order U-22020 (or any future modifications thereof) and offered under the same terms and condition as BellSouth offers the service under For purposes of this Order, AT&T will be deemed to be "recombining unbundled elements to create services identical to BellSouth's retail offerings" when the service offered by AT&T contain the functions, features and attributes of a retail offering that is the subject of properly filed and approved BellSouth tariff. Services offered by AT&T shall not be considered "identical" when AT&T utilizes its own switching or other substantive functionality or capability in combination with unbundled elements in order to produce a service offering. For example, AT&T's provisioning of purely ancillary functions or capabilities, such as operator services, Caller ID, Call Waiting, etc., in

combination with unbundled elements shall not constitute a "substantive functionality or capability" for purposes of determining whether AT&T is providing 'services identical to a BellSouth retail offering;'

BellSouth shall be allowed to reserve unto itself a "maintenance spare," with all other pole, conduit and right-of-way capacity be allocated by BellSouth on a first come/first serve basis;

AT&T's request for access to BellSouth's unused transmission media is dismissed as beyond the scope of these proceedings;

BellSouth shall make its right-of-way records available to AT&T upon the execution of a mutually acceptable confidentiality agreement;

Interim rates for unbundled network elements are hereby established, as listed on attached Appendix A, subject to true-up upon issuance of a permanent rates at such time as a final order issues in Docket U-22022 or any other pertinent Commission proceedings;

The "bill and keep" methodology as an interim compensation method for call transport and termination, pending establishment of permanent rates at such time as a final order issues in Docket U-22022 U-22022 or any other pertinent Commission proceedings;

BellSouth shall provide access to poles, conduits and rights-of-way under standard licensing agreements complying with all pertinent rules and regulations of this Commission;

Analysis of AT&T's request for Local and Long Distance Access pricing rules is deferred until such time as the FCC and this Commission have completed their analysis of these issues on a generic basis;

As to collect, third party and intraLATA calls the originating local service providers' rates shall apply BellSouth is to bill its charges to its end users and then bill resold services to AT&T at

the appropriate Commission approved discount rate for the purposes of AT&T billing its end users utilizing the resold BellSouth Service; and

AT&T's request for entry of general contractual terms and conditions is dismissed as being beyond the scope of these proceedings.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
JANUARY 28, 1997

DON OWEN DISSENTING
DISTRICT V
CHAIRMAN DON OWEN

/s/ IRMA MUSE DIXON
DISTRICT III
VICE-CHAIRMAN IRMA MUSE DIXON

/s/ DALE SITTIG
DISTRICT IV
COMMISSIONER DALE SITTIG

/s/ JAMES M. FIELD
DISTRICT II
COMMISSIONER JAMES M. FIELD

SECRETARY

/s/ JACK "JAY" A. BLOSSMAN, JR.
DISTRICT I
COMMISSIONER JACK "JAY" A. BLOSSMAN, Jr

# APPENDIX A

## Proposed Interim Rates for Unbundled Network Elements

| | |
|---|---|
| Network Interface Device | $ 0.68 |
| **Local Loop** | |
| Including NID | $ 19.08 |
| Excluding NID | $ 18.40 |
| **Local Switching** | |
| 2-wire per port | $ 2.15 |
| 2-wire hunting | $ 0.23 |
| Local Usage-Per Minute | $ 0.001599 |
| **Operator Systems** | |
| Directory Assistance | $ 0.2187 |
| DA Call Completion | $ 0.0170 |
| Intercept Services | $ 0.0201 |
| DA Transport | |
| Switched Common Transport Per Call | $ 0.000204 |
| Switched Common Transport Per Call Mile | $ 0.000003 |
| Access Tandem Per Call | $ 0.000820 |

| Dedicated Transport Mileage Band | Fixed Cost | Per Mile Cost |
|---|---|---|
| 0-8 | $ 12.61 | $ 0.0027 |
| 9-25 | $ 13.01 | $ 0.0314 |
| >25 | $ 13.24 | $ 0.0463 |

| | |
|---|---|
| Common Transport Per Minute | $ 0.000324 |
| Tandem Switching Per Minute | $ 0.001231 |
| Signaling Links/STPs | |
| 56 KBPS-A Link and D Link | $ 3.27 |
| ISUP Message | $0.0000035 |
| TCAP Message | $0.0000120 |
| STP Port | $ 87.59 |

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---|---|---|
| PETITION BY MCI FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF A PROPOSED AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS INC. CONCERNING INTERCONNECTION AND RESALE UNDER THE TELECOMMUNICATIONS ACT OF 1996 | ) ) ) ) ) ) | CASE NO. 96-431 |

# ORDER

On December 20, 1996, the Commission entered its final Order deciding the arbitrated interconnection issues between MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. ("MCI") and BellSouth Telecommunications Inc. ("BellSouth"). BellSouth and MCI have requested reconsideration and clarification of certain issues contained in that Order. The Commission's decisions regarding the parties' requests follow.

## I. RECONSTITUTION OF UNBUNDLED NETWORK ELEMENTS

BellSouth requests rehearing on the issue of recombination of unbundled network elements, citing it as "one of the most critical matters to be arbitrated."[1] BellSouth states that the Commission's Order permits MCI to circumvent the pricing policy set forth by the Act for the resale of retail services and to avoid the joint marketing restricting of Section 271(e)(1) of the Act. BellSouth states that the Order imposes a "grave injustice" on it,[2] and argues that since rebundling elements to provide a service is only resale by another

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1 BellSouth Petition at 1.

2 BellSouth Petition at 2.

cc: Eddy/ Judd Christian Steve faxed to Charlie 1/29/97

name, the resale pricing standards of Section 252(d)(3) of the Act, rather than the unbundled element pricing standards of Section 252(d)(1) of the Act, must apply. BellSouth argues that this result is compelled because Congress must have intended that competitors could provide retail service through combination of elements bought at unbundled elements rates only if they combine these elements with their own facilities.[3] Allowing a competitor to buy at unbundled rates and then combine the elements to provide service produces price "arbitrage," a result BellSouth claims Congress could not have intended.[4]

The Commission agrees that the issue is critical. If competitors are not able to use BellSouth's network elements at cost to provide service, viable competition is unlikely to grow. Moreover, the Commission rejects BellSouth's strained legal argument, which would require it to ignore the language and the structure of the statute.

The pricing for resale and the pricing for unbundled elements appear in two entirely different sections of the Act. Their terms cannot be cobbled together as BellSouth suggests. Section 252(d)(3) sets resale pricing standards "[f]or the purposes of section 251(c)(4)," the subsection which describes an incumbent LEC's duty to offer services for resale. The pricing standards of 252(d)(3) thus apply specifically to resale alone, and not to the sale of unbundled elements pursuant to an entirely different subsection, 251(c)(3).

Section 252(d)(1), in contrast, provides standards for pricing network elements "for purposes of subsection (c)(3)," the subsection which describes an incumbent LEC's ("ILEC") duty to sell unbundled elements. Unbundled elements must be sold at a price

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[3] BellSouth Petition at 7.

[4] BellSouth Petition at 8.

that is "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing . . . the network element," that is "nondiscriminatory," and that "may include a reasonable profit." Section 252(d)(1).

Section 251(c)(3) states that an incumbent LEC "shall" provide requesting carriers with "nondiscriminatory access to network elements on an unbundled basis" in accordance with, inter alia, the "requirements of . . . section 252." Furthermore, these elements must not only be provided at the cost plus formula prescribed in Section 252(d)(1); they must be provided "in such a manner that allows requesting carriers to provide such elements in order to provide such telecommunications service." Section 251(c)(3). The statute is plain on its face. The Commission must decline BellSouth's implied invitation to add the words "with their own facilities" after the final use of the word "elements" in the last sentence of Section 251(c)(3). The Commission also declines to adopt BellSouth's strained reading of the statute in which broad implications are garnered from BellSouth's interpretation of what Congress must have "intended." When a statute is plain on its face, its language is conclusive. See, e.g., Lynch v. Commonwealth, Ky., 902 S.W.2d 813, 814 (1995). See also Lincoln County Fiscal Court v. Dept. of Public Advocacy, Ky., 794 S.W.2d 162, 163 (1990) (where statute's words are "clear and unambiguous and express the legislative intent, there is no room for construction or interpretation and the statute must be given its effect as written").

Finally, BellSouth's insistence that the Commission's Order subjects it to injustice is apparently based upon the false premise that it will be unable to compete when its tariffed rate is substantially higher than the price at which a competitor can buy

unbundled elements to provide service. There are alternatives available to BellSouth other than attempting to convince this Commission to distort the statute. It may file an application to restructure its rates so that they more accurately reflect the cost of providing service. As with all issues brought before the Commission, such an application would be reviewed in the interest of providing Kentucky ratepayers affordable and reasonable prices.

Congress's intent is to drive telecommunications rates toward costs and to remove implicit subsidies from those rates. The Commission's Order in this case will, consistently with the federal mandate, help to accomplish these aims. To the extent subsidies are necessary, Congress enacted Section 254 of the Act, which provides for "explicit" universal service support. The Commission's current universal service proceeding, Administrative Case No. 360,[6] is the appropriate docket to consider such issues as subsidization of residential service.

BellSouth has previously taken prudent steps, such as filing for price cap rather than rate of return regulation, to position itself for the advent of local exchange competition. Altering its rates so that they more accurately reflect cost will be another such step, and will eliminate the extreme difference between the current resale rate and the unbundled element rate.

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[6] Administrative Case No. 360, Inquiry Into Universal Service and Funding Issues.

## II. RESTRICTIONS ON SERVICES OFFERED FOR RESALE

Grandfathered Services

MCI requests clarification of the Commission's decision on grandfathered services. MCI's concern is that BellSouth is opposed to making grandfathered services available to any customers of new entrants, whether they are grandfathered customers of BellSouth currently receiving the service or new customers.[6] MCI is also concerned that the scope of the "limitations" referred to in the Order is unclear.

Grandfathered services are those which are no longer offered to new subscribers, but are continued to be offered to subscribers having the service at the time that it is withdrawn. To deny a subscriber who might consider changing carriers the opportunity to continue to receive the service would put the potential competitor at a competitive disadvantage relative to the ILEC.

BellSouth in its Best and Final offer agreed to resell all of its retail services with certain limitations. One of the services to be resold subject to limitations was grandfathered services. That limitation was that grandfathered services would not be available to new or additional customers. The FCC's order at paragraph 968 states that all grandfathered customers should have the right to purchase such grandfathered services directly from the incumbent or indirectly through a reseller.

The Commission's December 20, 1996 Order is clarified to state that a subscriber changing carriers from the ILEC to a reseller shall be entitled to receive that same

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[6] MCI Petition at 7.

grandfathered service from a reseller who buys the service at the wholesale rate for the duration of the grandfathering period.

Promotions

MCI asked the Commission to clarify its Order that promotions lasting 90 days or less be made available for resale but that BellSouth need not provide these to MCI at any additional discount beyond the promotional rate itself. Promotional incentives take many forms. In some cases monthly charges are reduced or waived. In other cases nonrecurring charges such as installation may be waived. These types of incentives are common. MCI, under the Act, can resell any LEC tariffed service at the tariffed price less the wholesale discount and provide any promotional incentive it may consider necessary to meet a LEC's offering.

The Commission therefore clarifies its previous Order to state that services covered by a LEC's promotional offering are subject to the wholesale discount. However, the incentives are not. MCI or any other competing local exchange carrier ("CLEC") is free to package services with its own promotional incentive in any way it sees fit to respond to a similar promotional offering of a LEC.

Mandated Discounts

MCI requests that the Commission define and limit this category of services that BellSouth need not provide MCI for resale at any price. The Commission is not aware of any specific discount that BellSouth is mandated to offer. Should any such service arise in the future BellSouth should not be obliged to defer the mandated discounted

service at the mandated discount rate less any wholesale discount. The underlying services are available at the tariffed rates less the wholesale discount rate.

MCI may petition the Commission on a case-by-case basis challenging any restriction as to the terms or limitations contained in BellSouth's tariff.

Tariff Terms and Conditions

In its December 20, 1996 Order the Commission stated that services available for resale would be subject to the terms and conditions, including restrictions, found in BellSouth's General Subscriber Tariff. MCI requests modification of this policy to allow the company to challenge these terms, conditions and limitations before the Commission if they are deemed to be anticompetitive.

The Commission agrees with MCI and will modify its policy to allow MCI or any other CLEC to challenge tariffed terms, conditions or limitations before the Commission on a case-by-case basis.

Resale Rates

MCI has requested the Commission to establish two discount rates, one for a company providing its own operator services and one for a company purchasing operator services from the ILEC.

The Commission determined in Administrative Case No. 355 that ILECs will not be required to desegregate a retail service into more discrete retail services;[6] therefore this request to unbundle access to operator services from local services is denied.

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[6] Administrative Case No. 355, An Inquiry Into Local Competition, Univereal Service, and the Non-Traffic Sensitive Access Rate, Order dated September 26, 1996, at 8.

## III. BILLING SYSTEMS AND FORMAT

BellSouth asks the Commission to clarify its decision on the issue of billing systems and format to direct that a carrier access billing ("CAB") format be used for billing recall services and unbundled elements as opposed to using the actual CABs system.

MCI states that it is concerned with the format of the bill, not with the system used to produce the bill.[7] In its Order the Commission agreed with MCI's arguments that a CABs billing format was efficient and technically feasible. However, the Commission in its conclusion inadvertently omitted the word "formatted." Therefore, the Commission clarifies the decision to reflect that the bills rendered MCI will be in CABs format and that CABs software or hardware systems need not necessarily be used to produce the bill.

## IV. UNUSED TRANSMISSION MEDIA

BellSouth argues in its petition for rehearing that unused transmission media ("dark or dry fiber") is neither a network element nor a retail telecommunications service and that it should not, therefore, be required to make this resource available to competitors. However, the Commission has not defined dry fiber based on either of these definitions. The Commission has defined dry fiber as a resource to the public switched network, in the same manner as access to poles, ducts, conduits, and rights-of-way. Dry fiber constitutes an access point to the public switched network in the same way as a pole, duct, conduit or right-of-way. The latter access points are neither a

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[7] MCI's post hearing brief at 42.

network element nor a telecommunications service available for resale and the Act has made these available to competing companies.

Therefore, the Commission's decision on unused transmission media is affirmed with the following clarification. MCI asked for clarification on its ability to rebut BellSouth's determination that unused transmission media is unavailable. The Commission finds that MCI should be permitted to petition the Commission if it can demonstrate that BellSouth is unwilling to cooperate. The Commission also amends this section of its Order to change the time period for which BellSouth must plan for the utilization of unused transmission media from five (5) years to three (3) years. This shorter time frame conforms to a more reasonable LEC planning cycle and will enable the carrier to review budgeting plans.

V. COMPENSATION FOR EXCHANGE OF LOCAL TRAFFIC

BellSouth seeks rehearing of the Commission's determination that the pricing for termination of local calls should be at total element long run incremental cost ("TELRIC") rather than tariff access rates. BellSouth asserts that its appeal of the FCC's order and rules on TELRIC pricing should cause the Commission to reconsider its use of TELRIC in this case, and that the Commission should require true-ups from the implementation of this Order until permanent rates are established after the federal litigation has been concluded. However, independent of any FCC action, the Commission concluded that interconnection should be priced at cost plus a reasonable profit based on Section 252(d)(1) of the Act. Thus, BellSouth's request is denied.

BellSouth also seeks rehearing of the Commission determination to permit bill and keep arrangements for no more than a year. The Commission has reconsidered its decision and will modify the Order to require reciprocal compensation from the outset of this contract, if the two parties do not agree to a bill and keep arrangement. As previously stated by the Commission, "the market will be best served by swift development of the necessary recording and billing arrangements to provide reciprocal compensation among local carriers."[6]

MCI has sought clarification regarding the applicability of interconnection rates set forth in Appendix 1 of the December 20, 1996 Order to compensation for exchange of local traffic. With the modification requiring reciprocal compensation, the rates in Appendix 1 are interconnection rates applicable at the outset of this contract. Should MCI or BellSouth become dissatisfied with the interconnection rates contained in Appendix 1, they may renegotiate rates to become effective upon the termination of this two-year contract.

## VI. INTERIM LOCAL NUMBER PORTABILITY COST RECOVERY

BellSouth requests the Commission reconsider its decision that each LEC should bear its own cost for providing remote call forwarding as an interim number portability option, arguing that the Commission should instead set a cost-based price for remote call forwarding service. However, the Commission's original decision is consistent with the FCC's determinations and will provide an incentive to the ALECs to implement long term number portability. BellSouth's request is denied.

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[6] December 20, 1996 Order at 14.

## VII. THE PROVISION BY BELLSOUTH OF ADDITIONAL TELRIC STUDIES

BellSouth requests rehearing of the Commission's determination that within 60 days it must provide TELRIC studies for unbundled network elements that do not have a TELRIC estimate listed in BellSouth's best and final offer including the Network Interface Device ("NID") and non-recurring charges. BellSouth asserts that producing such information at this time is unwarranted because of the judicial stay of the FCC's pricing rules. However, the Commission reached its decision without regard to the FCC's stayed pricing standards and instead made independent determinations of the appropriate cost study methodologies for Kentucky. The information requested is necessary to complete the appropriation. Therefore, BellSouth's request is denied.

## VIII. PROCESS FOR ORDERING NETWORK ELEMENTS AND FOR REVIEW OF COST STUDY METHODOLOGIES

MCI has asked for the creation of an expedited process to review orders for additional unbundled network elements. The Commission declines to establish a specific process but notes that should MCI experience any difficulty in ordering additional unbundled network elements, it may file a petition with the Commission. Such a complaint will be handled as expeditiously as possible.

MCI requests that it be given an active role in the review of BellSouth's network element cost studies ordered to be filed. These BellSouth TELRIC studies will be filed in this proceeding in which MCI is clearly a party. Accordingly, the Commission declines to establish a separate proceeding for the review of the TELRIC cost studies.

## IX. ROUTING OF 0+, 0-, 411, 611, AND 555-1212 CALLS

MCI requests the Commission to clarify its decision concerning the routing of 0+, 0-, 411, 611 and 555-1212 calls. The Commission had decided that it would not require BellSouth to furnish wholesale tariff services minus operator services since BellSouth has no tariffed service without operator services included. Thus, an ILEC will not be required to sever its tariffed services from 0+ and 0- services when an ILEC is reselling the ILEC's tariffed services. However, if an ILEC and a CLEC agree to a wholesale rate for a service without operator services, the Commission will accept such an arrangement. But, if a CLEC provides service through purchase of unbundled elements, then the ILEC shall provide customized routing for 0+, 0-, 411, 611 and 555-1212 calls. The Commission modifies its December 20, 1996 Order to eliminate the statement that BellSouth shall retain 0+, 0-, 411, 611 and 555-1212 calls on an interim basis. If an ILEC asserts that customized call routing is not technically feasible, it has the burden of proving its claim.

## X. PERFORMANCE AND STANDARDS, QUALITY ASSURANCE, AND QUALITY CERTIFICATION

MCI requests that the Commission require BellSouth to prepare periodic comparative reports on its service quality to enable MCI to determine whether MCI's customers are receiving equal quality of service from BellSouth. However, BellSouth is required to provide the same quality of service to MCI as it provides to itself, and there does not appear to be any reason to assume BellSouth will not in good faith comply with this requirement. Should MCI have a basis on which to allege that a poorer quality of

service is being delivered to its customers than to BellSouth's, then it should immediately bring this matter to the Commission's attention through a petition.

The Commission, having considered the motions for reconsideration and clarification from BellSouth and MCI, and having been otherwise sufficiently advised, HEREBY ORDERS that its December 20, 1996 Order is affirmed in all respects except as modified herein.

Done at Frankfort, Kentucky, this 29th day of January, 1997.

By the Commission

DISSENT OF CHAIRMAN LINDA K. BREATHITT

I dissent only from the majority opinion on the issue of recombination of unbundled elements.

Section 251(c)(3) states that an incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service. On its face, this would logically lead to the conclusion that recombination of the unbundled elements in any manner was contemplated by Congress.

However when taken in context with other sections of the Act, this conclusion fails. In particular if recombinations were contemplated, there would have been no reason for Congress to establish two distinct pricing programs - one for resale and one for network

element pricing. The establishment of two pricing arrangements is inconsistent with the idea of recombination of all the elements.

Secondly, the joint marketing prohibition in Section 271(e)(1) states that a telecommunications carrier that serves more that 5 percent of the nation's presubscribed access lines is restricted from jointly marketing its interLATA toll services with services obtained from the BOC via resale. This restriction is lifted when a new entrant purchases unbundled network elements.

It seems to me a loophole in the Act has been exposed. Commissions in Tennessee, Georgia, North Carolina and Louisiana have also recognized this.

The Act requires the elimination of implicit subsidies, which is a good thing in a competitive world. BellSouth's business rates need to come down. However, this Commission has long encouraged telephone price subsidies because they keep urban and especially rural residential rates lower. The Commission affirmed this policy again in Case No. 94-121 by freezing residential rates for a period of three years or until there is a universal service fund in place. The elimination of these subsidies should occur, but my concern is that it may occur too swiftly if competitors are permitted to recombine certain network elements. That leaves residential customers scratching their heads and trying to make sense of competition as their bills increase.

I do not have a crystal ball, nor would I be accomplished in its use if I did have one. I do not know BellSouth's plans on rate rebalancing; nor do I know how all this will ultimately shake out. The Commission has opened a docket on universal service with the intent of providing a safety net where necessary subsidies in rates have been

removed by competitive pricing; but will universal service come to the rescue of rural customers in time? I fear it may not. I respectfully dissent.

Linda K. Breathitt
Chairman

ATTEST:

Don Mills
Executive Director